IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 280 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K. J. SHETH

Versus

SAURABH CONSTRUCTION COMPANY

Appearance:

MR KG SHETH for Appellant

MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 13/02/2003

ORAL JUDGEMENT

1. This first appeal filed by the original plaintiff is directed against the judgment, order and decree dated 30th September, 1980 passed in Civil Suit No.330 of 1977

by the learned Judge, City Civil Court No.21, Ahmedabad dismissing the said suit. The plaintiff had filed the said suit for a declaration that there was a concluded contract of agency between the parties to the suit and for taking accounts of commission at the rate of 10% and also for a decree for the amount that may be found due.

2. The plaintiff's case was that he was carrying on the business of Commission Agent at Ahmedabad in the name and style of M/s. Pipe Traders. The defendant Company was a manufacturer of A.C. Pressure Pipes and other items at Indore, Madhya Pradesh. The defendant had appointed the plaintiff as commission agent on agency basis for Gujarat State to secure orders directly in their favour from various Government and Semi-Government Departments from Gujarat State and they had agreed to pay commission at the rate of 10%. The plaintiff worked for the defendant Company with full zeal and enthusiasm and sent various tenders and inquiries and the defendant Company too, had expressed full satisfaction. The plaintiff, as an agent of defendant Company, purchased a tender copy of the Central Stores Purchasing Department of the Government of Gujarat for supply of A.C. Pressure Pipes on annual rate contract. After some letters were written by the plaintiff, the defendant Company sent a reply by letter dated 1st October, 1975 that they shall deal directly with the Department. According to the plaintiff, in view of the concluded contract, the defendant Company was estopped from quoting and/or appointing another firm as an agent without the knowledge of the plaintiff and the defendant had committed breach of the contract.

3. The defendant filed the written statement and resisted the suit on various grounds.

4. As many as 13 issues were raised but the substantial issues were only three which were as follows:

(1) Whether the plaintiff proves that there is a concluded contract of commission agent between plaintiff and defendant as alleged?

(2) If so, what are the terms and conditions of the said contract?

(3) Whether the plaintiff is entitled for accounts as prayed for?

At the end of the trial, the learned Judge held that the plaintiff had failed to prove that there was a concluded contract of commission agent between the parties and in view of this finding, he held that the plaintiff was not entitled to accounts, as prayed for. He, therefore, dismissed the suit.

5. The appellant has, therefore, filed this appeal challenging the said judgment and decree.

6. I have been taken through the judgment and the relevant evidence on record. The learned Judge has elaborately discussed the issue in paragraphs 7 to 9 of the judgment. He has recorded the specific finding that the suit was based upon one tender only and so there was no valid concluded contract nor was there anything on record which would support an inference that the plaintiff was treated as an agent by the defendant for this tender. He, therefore, held that there was no concluded contract.

7. This finding is based on appreciation of the evidence on record and it is not shown that the finding is, in any way, erroneous. There is no warrant for interference and the appeal is dismissed. No order as to costs.

(M.C. Patel, J.)

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